

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

KIMBERLY HUNT-BROWN,

Plaintiff,

vs. NO: 23-CV-00782 SMD-KK

NEW MEXICO GENERAL  
SERVICES DEPARTMENT, and  
VALERIE PAULK, EUNICE  
MOYA, JENNIFER MORFIN,  
VANESSA LEBLANC, AND  
NATALIE MARTINEZ, in their  
individual capacities,

Defendants.

DEPOSITION OF EUNICE MOYA

March 7, 2025

9:04 a.m.

119 E. Marcy, Suite 110

Santa Fe, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: HEATHER BURKE  
Attorney for the Plaintiff

REPORTED BY: Robin A. Brazil, RPR, NM CCR #154  
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(421P) RAB

<p style="text-align: right;">74</p> <p>1       <b>A. That was a follow-up to our meeting on</b>  2       <b>July 31st.</b>  3       Q. What happened at that meeting?  4       <b>A. Ms. Brown was notified that she would have</b>  5       <b>to return back to the office August 30.</b>  6       Q. Had you notified Ms. Hunt-Brown before  7       that meeting that she couldn't be accommodated?  8       <b>A. I may have through email. I can't recall.</b>  9       <b>I think it was probably a few days before letting</b>  10       <b>the -- her know that the state personnel office</b>  11       <b>rescinded the telework agreement policy, but I --</b>  12       <b>(Exhibit 26 marked.)</b>  13       Q. Exhibit 26 is the nonmandatory telework  14       policy for the general services department. Is this  15       the policy we were just talking about?  16       <b>A. Yes.</b>  17       Q. And what date was that rescinded?  18       <b>A. February -- I don't remember the exact</b>  19       <b>date. February 2023, but I just can't remember.</b>  20       <b>The 7th? I don't recall. Originally it was in -- I</b>  21       <b>believe it was in November an email went out that</b>  22       <b>all employees were to report back to work in</b>  23       <b>January, and then there was union negotiations back</b>  24       <b>and forth, and so they agreed upon a date of</b>  25       <b>February.</b></p>	<p style="text-align: right;">76</p> <p>1       <b>I do recall the meeting, but I don't recall you</b>  2       <b>saying that.</b>  3       Q. Okay.  4       <b>A. I just recall you saying that you did sue</b>  5       <b>the general services department.</b>  6       Q. So why would telework not be considered a  7       reasonable accommodation by the general services  8       department?  9       <b>A. Well, when I was -- when I started -- that</b>  10       <b>was -- their policy was never before. I'm not sure</b>  11       <b>what happened.</b>  12       <b>Again, before -- before I was there, I</b>  13       <b>can't answer that question.</b>  14       <b>(Exhibit 27 marked.)</b>  15       Q. Exhibit 27 is the MOU that you just -- is  16       this one of the MOUs that you referred to about the  17       union negotiations on the return to work?  18       <b>A. Yes.</b>  19       Q. And does number three specifically state  20       that any return to work doesn't apply to reasonable  21       accommodations?  22       <b>A. Yes.</b>  23       Q. So why would the telework policy being  24       rescinded mean that there was no reasonable  25       accommodation provided for telework?</p>
<p style="text-align: right;">75</p> <p>1       Q. Okay. Looking at page three of this  2       document that says GSD 24 on it. Sorry, page five,  3       which is 26.  4       4.14 says: Request for leave under the  5       Family Medical Leave Act or reasonable  6       accommodations under the Americans with Disabilities  7       Act, as amended or not governed by this policy.  8       Such requests are governed by general service  9       department FMLA policy and the ADA policy  10       respectively.  11       Is that what that says?  12       <b>A. Yes.</b>  13       Q. So how does this policy being rescinded  14       and no longer existing affect requests for  15       accommodation?  16       <b>A. Because prior to this going into effect,</b>  17       <b>telework was never an accommodation under ADA with</b>  18       <b>general services department.</b>  19       Q. So if you recall at the meeting that we  20       had on the 31st of July, I told you I personally was  21       accommodated with telework by the general services  22       department during my cancer treatment before this  23       policy existed, because telework was a reasonable  24       accommodation, and we discussed that.  25       <b>A. I don't recall you talking about yourself.</b></p>	<p style="text-align: right;">77</p> <p>1       <b>A. It was based on the guidance from the</b>  2       <b>state personal office.</b>  3       Q. The same state personnel office that  4       signed that agreement with the union, saying it  5       didn't apply to requests?  6       <b>A. Yes.</b>  7       Q. So why would they guide you -- why do you  8       believe that they would guide you to not accommodate  9       people with telework if they had just signed an  10       agreement with the unions saying that their  11       rescission of the nonmandatory telework policy  12       didn't apply?  13       <b>A. Because they left it to the discretion of</b>  14       <b>the employer, GSD, the agency.</b>  15       Q. So it wasn't state personnel office; it  16       was GSD's own personal decision?  17       <b>A. Based under guidance, yes.</b>  18       Q. But they left it up to you to decide?  19       <b>A. Yes.</b>  20       Q. And you decided not to accommodate  21       Ms. Hunt-Brown with telework; is that correct?  22       <b>A. Correct.</b>  23       <b>(Exhibit 28 marked.)</b>  24       Q. Exhibit 28 is an accommodations request  25       form by Ms. Hunt-Brown, submitted on August 4th,</p>

<p style="text-align: right;">78</p> <p>1 2023.</p> <p>2 Is this the accommodations request for</p> <p>3 Ms. Hunt-Brown's accommodation for her migraines?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>(Exhibit 29 marked.)</b></p> <p>6 Q. Do you recall we talked about</p> <p>7 Ms. Hunt-Brown's migraines in the July 31st meeting?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay. Exhibit 29 is a physician's</p> <p>10 statement that accompanied Exhibit 28. Are you</p> <p>11 familiar with this physician statement?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. On page three of this document, which is</p> <p>14 GSD 180, at the top of the page it says suggested</p> <p>15 accommodations, and the suggested accommodations was</p> <p>16 to allow Kimberly to take her work laptop home each</p> <p>17 evening. If she awakens with a migraine, allow her</p> <p>18 to work from home, parentheses, VPN telework,</p> <p>19 beginning after headache symptoms diminish,</p> <p>20 typically no later than midday.</p> <p>21 Did Ms. Hunt-Brown's physician request</p> <p>22 that she be allowed to telework part-time after</p> <p>23 having a migraine?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What was the basis for GSD's denial of the</p>	<p style="text-align: right;">80</p> <p>1 allowing her to virtually be in office would be a</p> <p>2 reasonable accommodation of the essential</p> <p>3 requirement to be in the office, correct?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Why?</p> <p>6 <b>A. Because we do not allow telework.</b></p> <p>7 <b>Q. GSD just doesn't allow telework no matter</b></p> <p>8 <b>what?</b></p> <p>9 <b>A. That's what I said.</b></p> <p>10 <b>Q. Nobody at GSD ever teleworks?</b></p> <p>11 <b>A. I can't say that.</b></p> <p>12 <b>Q. But you would know, correct?</b></p> <p>13 <b>A. No, because a work schedule -- a work</b></p> <p>14 <b>schedule is between an employee and supervisor. The</b></p> <p>15 <b>only way I would know is if there was an</b></p> <p>16 <b>accommodation request that came through HR.</b></p> <p>17 <b>Q. So you would only know if it's a</b></p> <p>18 <b>reasonable accommodation --</b></p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q. -- not if nondisabled people were allowed</b></p> <p>21 <b>to telework?</b></p> <p>22 <b>A. I don't know that.</b></p> <p>23 <b>Q. But GSD has never reasonably accommodated</b></p> <p>24 <b>somebody with telework?</b></p> <p>25 <b>A. There was a slew of them around the same</b></p>
<p style="text-align: right;">79</p> <p>1 physician's suggested accommodation?</p> <p>2 <b>A. We can accommodate an employee while</b></p> <p>3 <b>they're in the office under alternative</b></p> <p>4 <b>recommendations for accommodation.</b></p> <p>5 Q. What do you mean you can accommodate while</p> <p>6 they're in the office?</p> <p>7 <b>A. When an employee accepts the position,</b></p> <p>8 <b>they were notified that the position was in the</b></p> <p>9 <b>office Monday through Friday, 8:00 to 5:00 -- I'm</b></p> <p>10 <b>not sure at that point in time when Ms. Hunt-Brown</b></p> <p>11 <b>was hired there was an alternative work schedule. I</b></p> <p>12 <b>don't know the policy that far back.</b></p> <p>13 <b>So when an employee is in the office, we</b></p> <p>14 <b>can accommodate them while they're in the office.</b></p> <p>15 Q. Okay. Because that made Ms. Hunt-Brown</p> <p>16 being in the office an essential function of her</p> <p>17 position; did it not?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And the point of a reasonable</p> <p>20 accommodation is to assist Ms. Hunt-Brown performing</p> <p>21 the essential functions of her position, correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. And so if an essential function of her</p> <p>24 position is to be able to be in the office, an</p> <p>25 accommodation to that essential function of telework</p>	<p style="text-align: right;">81</p> <p>1 <b>time that your client was approved for.</b></p> <p>2 Q. And you denied all of those?</p> <p>3 THE WITNESS: Do I answer that?</p> <p>4 MR. LOMAN: You can answer that.</p> <p>5 <b>A. They were given the same accommodation,</b></p> <p>6 <b>the six-month, and then at that time they were asked</b></p> <p>7 <b>to come back to the office.</b></p> <p>8 Q. But wasn't the accommodation for six</p> <p>9 months for COVID issues, with being high risk?</p> <p>10 <b>A. No. It was whenever the accommodation was</b></p> <p>11 <b>requested to work from home.</b></p> <p>12 Q. So you looked at the request -- what</p> <p>13 was -- you looked at what was being requested, not</p> <p>14 why it was being requested?</p> <p>15 <b>A. Yes, what was -- why -- wait. No. Ask me</b></p> <p>16 <b>that question again. I'm sorry.</b></p> <p>17 Q. So when you extended the telework for</p> <p>18 people, you extended it based on the fact that you</p> <p>19 were extending telework, not that somebody had a</p> <p>20 specific need for telework?</p> <p>21 <b>A. No. I based it on the medical</b></p> <p>22 <b>certification, not based on telework. Not on -- not</b></p> <p>23 <b>on the -- not on the first part that you said.</b></p> <p>24 Q. So looking back at Exhibit 29, the medical</p> <p>25 certification suggests that the accommodation for</p>

<p style="text-align: right;">86</p> <p>1     migraines, correct?</p> <p>2     <b>A. I don't know about for her migraines, but</b></p> <p>3     <b>she did ask for the paperwork.</b></p> <p>4     Q. Did she say that, that she was wanting to</p> <p>5     revise her request for her migraines?</p> <p>6     <b>A. Yes.</b></p> <p>7     Q. This was before our meeting on July 31st,</p> <p>8     correct?</p> <p>9     <b>A. Uh-huh.</b></p> <p>10    Q. But at the top of this page you already</p> <p>11    tell Ms. Hunt-Brown that GSD is unable to</p> <p>12    accommodate her telework schedule. So you're</p> <p>13    already denying her request for accommodation prior</p> <p>14    to the interactive process meeting. Why is that?</p> <p>15    <b>A. Due to the rescission of the telework.</b></p> <p>16    Q. Why have an interactive process meeting to</p> <p>17    discuss accommodations if you've already flatly</p> <p>18    denied them?</p> <p>19    <b>A. Because we were going to talk about how we</b></p> <p>20    <b>could accommodate Ms. Hunt-Brown while she was in</b></p> <p>21    <b>the office.</b></p> <p>22    Q. And at that meeting we did talk about her</p> <p>23    migraines, but we didn't talk about her COVID risk;</p> <p>24    did we?</p> <p>25    <b>A. No.</b></p>	<p style="text-align: right;">88</p> <p>1     correct?</p> <p>2     <b>A. Yes.</b></p> <p>3     <b>(Exhibit 31 marked.)</b></p> <p>4     Q. Exhibit 31 is a letter from Eunice Moya to</p> <p>5     Kimberly Hunt-Brown, sent on August 4th. This is</p> <p>6     different than the previous letter we discussed.</p> <p>7     <b>A. Uh-huh.</b></p> <p>8     Q. What is this -- are you familiar with this</p> <p>9     letter, Ms. Moya?</p> <p>10    <b>A. Yes.</b></p> <p>11    Q. What is this letter?</p> <p>12    <b>A. This is notifying her we were unable to</b></p> <p>13    <b>accommodate the telework schedule due to the</b></p> <p>14    <b>rescission of the telework policy.</b></p> <p>15    Q. And this was sent the same day</p> <p>16    Ms. Hunt-Brown submitted her formal request for</p> <p>17    accommodation for her migraines, correct?</p> <p>18    <b>A. Correct.</b></p> <p>19    Q. August 4th, did you have another</p> <p>20    interactive process meeting?</p> <p>21    <b>A. No.</b></p> <p>22    Q. And you decided the same day that</p> <p>23    Ms. Hunt-Brown's accommodation request was not a</p> <p>24    suitable accommodation?</p> <p>25    <b>A. Based on the policy.</b></p>
<p style="text-align: right;">87</p> <p>1     Q. Had you asked Ms. Hunt-Brown if she</p> <p>2     intended to continue seeking the same accommodation</p> <p>3     before you decided you were going to deny it?</p> <p>4     <b>A. One more time.</b></p> <p>5     Q. Had you talked to Ms. Hunt-Brown about</p> <p>6     whether or not she was going to continue her</p> <p>7     previous accommodation before you decided that you</p> <p>8     were denying it?</p> <p>9     <b>A. No.</b></p> <p>10    Q. Did you have any updated paperwork before</p> <p>11    the interactive process meeting?</p> <p>12    <b>A. No.</b></p> <p>13    Q. So you set an interactive process meeting</p> <p>14    without actually asking for another accommodation</p> <p>15    form first?</p> <p>16    <b>A. This meeting was to notify -- formally</b></p> <p>17    <b>notify Ms. Hunt-Brown that there is no more</b></p> <p>18    <b>telework, and all telework accommodations were going</b></p> <p>19    <b>to be rescinded. That's what my intent was.</b></p> <p>20    Q. Based on the rescission of the policy that</p> <p>21    didn't provide reasonable accommodation requests,</p> <p>22    correct?</p> <p>23    <b>A. Correct.</b></p> <p>24    Q. This was GSD's own decision that it was</p> <p>25    just not going to allow telework at all anymore,</p>	<p style="text-align: right;">89</p> <p>1     Q. Your own policy to not telework -- grant</p> <p>2     telework?</p> <p>3     <b>A. GSD's.</b></p> <p>4     Q. You are GSD's HR director, correct?</p> <p>5     <b>A. Yes.</b></p> <p>6     Q. So GSD decided that no matter what any</p> <p>7     doctor requested for any employee, there would be no</p> <p>8     telework?</p> <p>9     <b>A. Correct.</b></p> <p>10    Q. Looking back at Exhibit 1 on page four of</p> <p>11    the document, not including -- I guess that's five</p> <p>12    including the cover page. 7.3, the determinations</p> <p>13    as we discussed earlier today.</p> <p>14    GSD makes determinations about reasonable</p> <p>15    accommodations on a case-by-case basis. Various</p> <p>16    factors, based on an individualized assessment, are</p> <p>17    considered in each situation.</p> <p>18    How is your decision to not grant any</p> <p>19    telework to anybody no matter what compliant with</p> <p>20    this provision of the policy?</p> <p>21    <b>A. Because we accommodate an employee while</b></p> <p>22    <b>they're in the office. We accommodate them to</b></p> <p>23    <b>perform their essential functions while they're in</b></p> <p>24    <b>the Joseph Montoya Building or T187 building,</b></p> <p>25    <b>wherever these employees are located.</b></p>

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1 Q. Right. We've already talked about that,  
2 and we agreed as an essential function of  
3 Ms. Hunt-Brown's position, being in the office would  
4 be something that could be accommodated under this  
5 policy to help her still be in the office when she  
6 can't physically be there.

7 A. Yeah, there was no telework accommodation.

8 Q. So you're not complying with this  
9 provision, because there's no individualized  
10 assessment at all. There's a blanket policy to not  
11 grant telework, correct?

12 A. Telework.

13 Q. Right. But so there's no individualized  
14 assessment at all, because it doesn't matter who  
15 asks and why, you just don't grant telework no  
16 matter what.

17 A. Correct.

18 Q. And you believe that that is compliant  
19 with the ADA and New Mexico Human Rights Act?

20 A. To the best of my knowledge, yes.

21 Q. Does this make Ms. Hunt-Brown take off  
22 additional work that she didn't otherwise need to  
23 take off?

24 A. Based on her -- I believe so. I don't  
25 know. I don't know what -- I don't know.

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1 Q. So if she can't drive to the office  
2 because of the medication she's taking, but she  
3 feels better and is able to work, but she can't  
4 telework, that means she can't work those hours,  
5 right, so she has to be absent for hours that she  
6 could otherwise work if she could drive, right?

7 A. Right.

8 Q. So does this hurt GSD to have employees  
9 not working when they could otherwise work?

10 A. I don't know.

11 Q. Do you think that it interferes with  
12 somebody's FMLA to force them to take FMLA leave  
13 that they don't otherwise need because they're not  
14 being accommodated?

15 A. I don't know.

16 Q. Isn't it your job to know these laws?

17 A. Yes.

18 Q. Why does GSD require somebody to submit  
19 medical certification for request for accommodation  
20 if they're not going to even consider the  
21 recommended accommodation?

22 A. Like I said earlier, based on performing  
23 the essential functions in the office is where we  
24 can accommodate.

25 Q. Right, but you can't accommodate the

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1 essential function of being in the office, correct?

2 A. No, because it is the employee's  
3 obligation to find a way to get to the office. It's  
4 not on the employer.

5 Q. It's not on the employer to help an  
6 employee perform the essential functions of their  
7 position?

8 A. No, I didn't say that, but it's not an  
9 employer's job to figure out how they're going to  
10 get from home to the office.

11 Q. Is Ms. Hunt-Brown asking you guys to  
12 provide a taxi for her?

13 A. No.

14 Q. Is she asking you to virtually allow her  
15 to be in the office through telework?

16 A. Yes.

17 Q. Did you allow people to virtually be in  
18 the office for telework during the COVID pandemic?

19 A. Yes.

20 Q. Because people can perform the essential  
21 functions of their position that way, correct?

22 A. Mostly.

23 Q. What essential functions of  
24 Ms. Hunt-Brown's position can she not achieve doing  
25 that?

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1 A. I don't know.

2 Q. So in your first letter that you sent  
3 where you identified her working from her office and  
4 said that a reasonable accommodation would be to  
5 allow her to remotely attend meetings from her  
6 office in the building, how is that different than  
7 her remotely attending meetings from her office at  
8 home?

9 A. Because there's no telework.

10 Q. Okay. So it's just telework? There's not  
11 any -- there's not any reason behind it? It's just  
12 the idea of telework is just not allowed?

13 A. Correct.

14 Q. And you said this was your decision to  
15 just not allow telework?

16 A. It was the agency's decision.

17 Q. You, as HR director, make that decision,  
18 or can somebody tell you to make that decision?

19 A. It was based on leadership, GSD  
20 leadership.

21 Q. So somebody told you --

22 A. Correct.

23 Q. -- or you decided yourself?

24 A. No, I did not decide myself.

25 Q. Okay. Who told you?

<p style="text-align: right;">94</p> <p>1 <b>A. It was our cabinet secretary and our</b>  2 <b>general counsel.</b>  3 Q. And they decided that GSD would never  4 accommodate anybody through telework?  5 <b>A. Correct.</b>  6 Q. Despite their agreement with the union,  7 the state's agreement with the union?  8 <b>A. With -- based on general counsel from the</b>  9 <b>state personnel office guidance with our general</b>  10 <b>counsel, correct.</b>  11 Q. Since August 4th have you engaged with  12 Ms. Hunt-Brown to determine whether or not she needs  13 any accommodations or if there's anything else that  14 can be done to assist her performing the essential  15 functions of her position?  16 <b>A. No.</b>  17 Q. Why not?  18 <b>A. Because she -- I don't believe that she's</b>  19 <b>come to my office or to me personally, and I can't</b>  20 <b>speak on the -- on the behalf of the consultants,</b>  21 <b>because I'm not sure whether there's been</b>  22 <b>communication.</b>  23 Q. So you denied her request for  24 accommodation outright on August 4th and then never  25 followed up to have another interactive process</p>	<p style="text-align: right;">96</p> <p>1 Q. And is that with the intent of problem  2 solving and trying to figure out solutions to any  3 impediments to a disabled worker's performance?  4 <b>A. Yes.</b>  5 Q. But you chose not to do that for  6 Ms. Hunt-Brown?  7 <b>A. We did have one.</b>  8 Q. You had one in which you had already told  9 her you weren't going to grant telework, and then  10 you got her paperwork from her doctor saying that  11 they thought telework was the best way to  12 accommodate this, and you said no, and then you  13 didn't do any more?  14 <b>A. Correct.</b>  15 Q. So you knew that she still wasn't being  16 accommodated at all, correct, because there's not --  17 on this second letter, there's not any even  18 alternative suggestions of what she could do,  19 correct?  20 <b>A. No, we just based it on that first letter</b>  21 <b>I sent in.</b>  22 Q. And obviously those alternate  23 accommodations that were suggested for an  24 accommodation she was not seeking wouldn't apply to  25 her accommodation needs for a migraine; would they?</p>
<p style="text-align: right;">95</p> <p>1 meeting?  2 <b>A. No.</b>  3 Q. Even though earlier today you talked about  4 the fact that sometimes you have two interactive  5 process meetings, correct?  6 <b>A. Correct.</b>  7 Q. Why did you not have a second one in this  8 case?  9 <b>A. I can't say. I don't -- no reason.</b>  10 Q. Who was the secretary of GSD at the time  11 this decision was made?  12 <b>A. I believe it was Anna Silva or Robert --</b>  13 <b>Robert Doucette. Robert Doucette.</b>  14 Q. Is he still the secretary?  15 <b>A. No.</b>  16 Q. When did he leave?  17 <b>A. He left in -- on January 31st.</b>  18 Q. Of this year?  19 <b>A. Yes.</b>  20 Q. What is your understanding of what the  21 ADA's requirement to have an interactive process  22 meeting is?  23 <b>A. For both parties to get together and to</b>  24 <b>come to an agreement with a reasonable accommodation</b>  25 <b>to perform the essential functions of the job.</b></p>	<p style="text-align: right;">97</p> <p>1 <b>A. I don't know.</b>  2 Q. Would telework --  3 <b>A. Based on what the medical -- the medical</b>  4 <b>provider said, they wouldn't.</b>  5 Q. Okay. Thank you. So would it be  6 considered retaliation under GSD's -- both their  7 accommodations policy and their antiretaliation  8 policy to just leave a worker who's notified you of  9 a need for accommodations with no accommodations at  10 all?  11 <b>A. I don't think it would.</b>  12 Q. Why not?  13 <b>A. Because we weren't -- or I wasn't trying</b>  14 <b>to cause any undue hardship to Ms. Hunt-Brown.</b>  15 Q. But you knew she needed an accommodation,  16 and you didn't provide anything to her, correct?  17 <b>A. I provided the three on the letter.</b>  18 Q. For the ones she wasn't seeking. Those  19 ones are targeted for her previous high-risk COVID  20 assessment, correct?  21 <b>A. Correct.</b>  22 Q. But that because of changes in  23 vaccinations and all of that, she no longer needed,  24 because her doctors apparently felt that her  25 high-risk status wasn't as much an issue, you know,</p>